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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



JAN 14 2002

File: LIN-00-142-52415 Office: Nebraska Service Center Date:

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a real estate investment and management firm with 8 employees and an approximate gross annual income of \$1.75 million. The record shows that the beneficiary was previously employed by the petitioner in H-1B status from August 9, 1993 to August 7, 1999. The petitioner submitted a photocopy of a page from the beneficiary's passport showing the beneficiary returned to his country, Jordan, on August 4, 1999. The petitioner now seeks to employ the beneficiary as a vice president for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the petitioner had failed to establish that a baccalaureate degree in a specialized area is required for employment as a general manager or executive. On appeal, counsel contends that the proffered position is most similar to that of a financial manager, an occupation which normally requires a baccalaureate degree in finance, accounting, economics, or business administration.

The petitioner is a real estate management and acquisition firm which currently owns and manages various commercial and residential properties, including five apartment complexes and several rental homes. The company manages the day-to-day operations of each property with the purpose of maintaining and increasing the value of such properties. The services provided by the petitioner include the management of financial aspects such as mortgages, taxes, and insurance; on-site management; payroll; maintenance; security; grounds keeping; trash; and other related services. The petitioner also interacts with tenants to ensure the investigation and timely resolution of complaints and concerns.

The Service does not agree with counsel's argument that the proffered position is most similar to that of a financial manager. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Oversee all investment matter[s] to include planning and directing the purchase, development and disposition of the property on behalf of the owner.
2. [S]upervise and periodically review preparation of financial statement[s] and report to the owner concerning the value of existing properties as well as the availability of potential investment properties;
3. Periodically review the profitability of existing properties and recommend potential disposition to the owner of the properties.
4. Negotiate with local government leaders to eliminate obstacles in development as well as meet with local leaders to discuss existing or potential legal environmental problems that may arise involving each property.
5. Possess ability to translate documents from English to Arabic and communicate effectively with owners in Arabic language.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or

4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The director concluded that the proffered position appears to be that of a general manager or executive. Upon further review, it is concluded that the proffered position appears to combine the duties of a general manager or executive with those of a property or real estate manager. The Handbook describes the duties of a real estate or property manager at page 71 as follows:

Property managers handle the financial operations of the property, insuring that mortgages, taxes, insurance premiums, payroll, and maintenance bills are paid on time. Some property managers, called asset property managers, supervise the preparation of financial statements and periodically report to the owners on the status of the property..

Some property managers, called real estate asset managers, ... plan and direct the purchase, development, and disposition of real estate on behalf of the business and investors.

A review of the Handbook, 2000-2001 edition, at page 71 does not indicate that a baccalaureate or higher degree in a specialized area is required for employment as a real estate or property manager. Most employers prefer to hire college graduates for property management positions. Entrants with degrees in business administration, accounting, finance, real estate, public administration, or related fields are preferred, but those with degrees in the liberal arts may also qualify. Good speaking, writing, computer, and financial skills, as well as an ability to deal tactfully with people, are essential in all areas of property management.

A review of the Handbook at pages 50-51 also finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

The petitioner asserts that the Department of Labor has determined in its Dictionary of Occupational Titles (DOT) that a position as vice president of a company requires a baccalaureate degree.

However, a reference in the DOL's DOT, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

With respect to the petitioner's objection to denial of this petition in view of the previous approval of three petitions filed by the petitioner on behalf of the beneficiary, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the approved visa petition and its supporting documents. It is, therefore, not possible to determine definitively whether it was approved in error or whether the facts and conditions have changed since its approval. Determinations of eligibility are based on the totality of evidence available to this Service at this time. The Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F. 3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct. 51 (U.S. 2001).

Further, regarding the beneficiary's Arabic-speaking duties, the petitioner has not established that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree in the Arabic language.

The petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.